



**GERALD C. MANN**  
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ATTORNEY GENERAL

**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN, TEXAS

Hon. L. L. Geren  
County Attorney  
Limestone County  
Groesbeck, Texas

Dear Sir:

Attention of Mr. J. B. Engledow

Opinion No. O-1452

Re: Fees of a constable in examining  
trials in Limestone County.

Your request for our opinion of the questions  
as are herein stated has been received by this department.

Your letter reads in part as follows:

"Limestone County has a population of  
39,497 according to the 1930 Federal Census.  
A total of 4,059 votes were cast in Limestone  
County at the 1936 presidential election.

"I desire your advice on the following  
questions;

"1. To what fees is a constable of this  
county entitled for services rendered in con-  
nection with an examining trial?

"2. What charge should a constable of  
this county make for mileage traveled in  
executing a warrant of arrest within the county  
in connection with an examining trial?

"3. What charge should a constable of  
this county make for mileage traveled in going  
after and conveying to this county for his  
examining trial a prisoner arrested in another  
county?"

Article 1020, Code of Criminal Procedure, reads

in part as follows:

".... Sheriffs and constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and no 100 (\$4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day.

".... The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District Court, ....

"Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in the complaint, or a severance is had. When defendants are proceeded against separately, who could have been

proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with."

There was more than three thousand (3,000) votes cast at the last preceding presidential election in Limestone County; however, said county had a population of less than forty thousand inhabitants as shown by the preceding Federal Census. Therefore, Article 1030, Code of Criminal Procedure, regarding fees of the sheriff or constable, would be applicable to Limestone County so far as it relates to the constable's compensation for mileage traveled in going to the place of arrest and conveying the prisoner or prisoners to jail.

Article 1030, Code of Criminal Procedure, reads in part as follows:

"In each county where there have been cast at the preceding presidential election less than 3,000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

"1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal Census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and

necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

"....

"4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner."

It has been the departmental ruling of the Comptroller's office that Article 1030, Code of Criminal Procedure, applies to all counties regardless of the votes cast at the preceding presidential election when such counties have a population of less than forty thousand inhabitants as shown by the preceding Federal Census.

Article 1065, Code of Criminal Procedure, provides definite fees for certain services performed by the sheriff or other peace officer performing the same services in misdemeanor cases.

Article 1020, Code of Criminal Procedure, supra, specifically provides that the sheriff and constable serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as fixed by law for similar services in misdemeanor cases in county court.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this department that all items of costs for services rendered by a constable of Limestone County in connection with examining trial except charges for mileage traveled in going to the place of arrest and conveying the prisoner or prisoners to jail, the terms of Article 1065, Code of Criminal Procedure will apply, provided such officer's charge for these particular items of service does not exceed \$4.00 in any one case.

You are further advised that in addition to the above mentioned fees when an arrest is made in the county

**Hon. L. L. Ceren, Page 5**

the constable is entitled to fifteen cents per mile for each mile actually and necessarily traveled in going to the place of arrest and ten cents per mile traveled in conveying such prisoner to jail when traveling by railroad; and when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional person conveyed to jail on the same trip.

In answer to your third question, it is our opinion that where a constable goes after a prisoner arrested under an examining court warrant in another county and conveys such prisoner back to Limestone County for his examining trial, the constable is entitled to ten cents per mile for each mile going and coming, when traveling by railroad, or fifteen cents per mile for each mile going and coming when traveling otherwise than by railroad, and when more than one person is conveyed and moved at the same time, the constable shall be allowed ten cents a mile for each additional prisoner, such additional mileage to be computed on the basis of distance traveled in returning with such prisoner.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

**ATTORNEY GENERAL OF TEXAS**

By /s/ **Ardell Williams**  
**Ardell Williams**  
Assistant

**AW:AW:jmc**

**APPROVED OCT 11, 1939**

/s/ **ROBERT E. KEPPE**

**Acting Attorney General of Texas**

**APPROVED OPINION COMMITTEE**  
**BY B. W. B., CHAIRMAN**